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HANDBOOK OF CIVIL RIGHTS  
LAWS, RULES, AND REGULATIONS  
FOR USDA PERSONNEL



APR 23 1975

ENTALOGIC PH

Revised by:

CAREER DEVELOPMENT STAFF  
OFFICE OF PERSONNEL /  
U. S. DEPARTMENT OF AGRICULTURE,

JANUARY 1973

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## TABLE OF CONTENTS

CIVIL RIGHTS ACT OF 1866 -----	1
CIVIL RIGHTS ACT OF 1964 -----	1
Title VI -----	1
Title VII -----	2
CIVIL RIGHTS ACT OF 1968, TITLE VIII -----	15
EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972 -----	24
EXECUTIVE ORDER 11246 -----	35
EXECUTIVE ORDER 11375 -----	45
EXECUTIVE ORDER 11478 -----	47
SECRETARY'S MEMORANDUM NO. 1662 -----	49
Supplement 1 -----	54
Supplement 2 -----	56
Supplement 3 -----	58
Supplement 4 -----	59
Supplement 5 -----	60
Supplement 6 -----	62
CODE OF FEDERAL REGULATIONS, TITLE 7, PART 15 -----	64



All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.

U. S. CONGRESS  
CIVIL RIGHTS ACT  
APRIL 9, 1966



Public Law 88-352  
88th Congress, H. R. 7152  
July 2, 1964

An Act

78 STAT. 241.

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Civil Rights Act of 1964".

Civil Rights Act  
of 1964.

TITLE VI—NONDISCRIMINATION IN FEDERALLY  
ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Rules governing  
grants, loans,  
and contracts.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express find-

Approval by  
President.

ing on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Termination.

Sec. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Judicial review.

60 Stat. 243.  
5 USC 1009.

Sec. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

## TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

### DEFINITIONS

Sec. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers. "Person."

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or a State or political subdivision thereof, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954: *Provided,* That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hun-

68A Stat. 163;  
74 Stat. 534.  
26 USC 501.



dred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers: *Provided further*, That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex or national origin and the President shall utilize his existing authority to effectuate this policy.

"Employment  
agency."

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, or an agency of a State or political subdivision of a State, except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

"Labor organi-  
zation."

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) twenty-five or more thereafter, and such labor organization—

61 Stat. 136.  
29 USC 167.

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

44 Stat. 577;  
49 Stat. 1189.  
45 USC 151.

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an

industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an "Employee." employer.

(g) The term "commerce" means trade, traffic, commerce, trans- "Commerce." portation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959. "Industry af- fecting com- merce."

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act. 73 Stat. 519. 29 USC 401 note. "State."

67 Stat. 462. 43 USC 1331 note.

#### EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corpora- Religious organ- tions, etc. tion, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution.

#### DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer— Unlawful practices.

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or Employers.

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employ- Employment ment agency to fail or refuse to refer for employment, or otherwise agency. to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor Labor organ- organization— ization.

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any

way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Training pro-  
grams.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Exceptions.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

64 Stat. 987.  
50 USC 781 note.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.



(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

77 Stat. 56.  
29 USC 206.  
Indians.

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Preferential  
treatment.

#### OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on reli-

gion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Establishment. SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

Term of office. (b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

63 Stat. 954;  
76 Stat. 843.  
5 USC 1071 note. (c) The Commission shall have an official seal which shall be judicially noticed.

Reports to the President and Congress. (d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

70 Stat. 736.  
5 USC 2201 note. (e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2201-2209), is further amended—

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

“(32) Chairman, Equal Employment Opportunity Commission”; and

(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205(a)) the following: “Equal Employment Opportunity Commission (4).”

70 Stat. 737.  
5 USC 2205. (f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

Powers. (g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

53 Stat. 1148;  
64 Stat. 475.  
5 USC 1181.

#### PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expira-

Legal proceedings.



tion of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

Time require-  
ments.

(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

Courts.  
Jurisdiction.

(f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall

have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

62 Stat. 937.  
74 Stat. 912;  
76A Stat. 699.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

47 Stat. 70.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (e), the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under subsection (e) and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

62 Stat. 929.  
65 Stat. 726;  
72 Stat. 348,  
1770.  
Costs, fees.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the

Suits by Attorney General.



person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

#### EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

#### INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of such agencies and their employees and, notwithstand-

Agreements,  
State and local  
agencies.

ing any other provision of law, may reimburse such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements and under which no person may bring a civil action under section 706 in any cases or class of cases so specified, or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

Records.

(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.

Exceptions.

3 CFR, 1961  
Supp., p. 86.  
5 USC 631 note.

Prohibited  
disclosures.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.

INVESTIGATORY POWERS

SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for permission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with the provisions of section 709 (c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

Petitions.

(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to a proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.



## NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

## VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

## RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

60 Stat. 237.  
5 USC 1001  
note.

## FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of section 111, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

62 Stat. 688.

## SPECIAL STUDY BY SECRETARY OF LABOR

SEC. 715. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and of the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.

Report to  
Congress.

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

Presidential  
conferences.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

Membership.



Public Law 90-284  
90th Congress, H. R. 2516  
April 11, 1968

## An Act

To prescribe penalties for certain acts of violence or intimidation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Civil rights.

### TITLE VIII—FAIR HOUSING

#### POLICY

SEC. 801. It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

#### DEFINITIONS

SEC. 802. As used in this title—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

## EFFECTIVE DATES OF CERTAIN PROHIBITIONS

SEC. 803. (a) Subject to the provisions of subsection (b) and section 807, the prohibitions against discrimination in the sale or rental of housing set forth in section 804 shall apply:

(1) Upon enactment of this title, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to the date of enactment of this title;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to the date of enactment of this title: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph

(1) and to all other dwellings except as exempted by subsection (b).

(b) Nothing in section 804 (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 804(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

FDIC or FSLIC  
institution.

Exemptions.

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

#### DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 804. As made applicable by section 803 and except as exempted by sections 803 (b) and 807, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

#### DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 805. After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this sec-



tion shall impair the scope or effectiveness of the exception contained in section 803(b).

#### DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

SEC. 806. After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

#### EXEMPTION

SEC. 807. Nothing in this title shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this title prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

#### ADMINISTRATION

Authority and  
responsibility.  
Assistant Secre-  
tary.

SEC. 808. (a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) The Department of Housing and Urban Development shall be provided an additional Assistant Secretary. The Department of Housing and Urban Development Act (Public Law 89-174, 79 Stat. 667) is hereby amended by—

42 USC 3533.

(1) striking the word "four," in section 4(a) of said Act (79 Stat. 668; 5 U.S.C. 624b(a)) and substituting therefor "five,"; and

42 USC 3535.

(2) striking the word "six," in section 7 of said Act (79 Stat. 669; 5 U.S.C. 624(c)) and substituting therefor "seven."

Delegation of  
authority.

(c) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5362, and 7521 of title 5 of the United States Code. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

80 Stat. 415,  
528.

(d) All executive departments and agencies shall administer their programs and activities relating to housing and urban development



in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes.

(e) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

#### EDUCATION AND CONCILIATION

SEC. 809. Immediately after the enactment of this title the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this title. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this title and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of title 5 of the United States Code. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this title. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

80 Stat. 499.

Reports on  
conferences.

#### ENFORCEMENT

SEC. 810. (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irreversibly injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a sub-

Complaints.  
Procedure for  
filing.

Penalty.

sequent proceeding under this title without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

(b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title, the Secretary shall notify the appropriate State or local agency of any complaint filed under this title which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of  
civil actions.

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c), the Secretary has been unable to obtain voluntary compliance with this title, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this title, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this title. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 812, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 812, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

## INVESTIGATIONS; SUBPENAS; GIVING OF EVIDENCE

SEC. 811. (a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

Records and documents, access.

Subpoenas.

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

Witnesses, compensation.

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Failure to testify, penalty.

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.



ENFORCEMENT BY PRIVATE PERSONS

SEC. 812. (a) The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 810(d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Civil action  
without fees,  
etc.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

Damages, limi-  
tation.

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided,* That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 813. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title.

EXPEDITION OF PROCEEDINGS

SEC. 814. Any court in which a proceeding is instituted under section 812 or 813 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

## EFFECT ON STATE LAWS

SEC. 815. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

## COOPERATION WITH STATE AND LOCAL AGENCIES ADMINISTERING FAIR HOUSING LAWS

SEC. 816. The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this title. In furtherance of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Publication in  
Federal Register.

## INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 817. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806. This section may be enforced by appropriate civil action.

## APPROPRIATIONS

SEC. 818. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this title.

## SEPARABILITY OF PROVISIONS

SEC. 819. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.



Public Law 92-261  
92nd Congress, H. R. 1746  
March 24, 1972

## An Act

86 STAT. 103

To further promote equal employment opportunities for American workers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Equal Employment Opportunity Act of 1972".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers."

(3) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(4) In subsection (e) strike out between "(A)" and "and such labor organization", and insert in lieu thereof "twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972, or (B) fifteen or more thereafter,".

(5) In subsection (f), insert before the period a comma and the following: "except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision."

(6) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

(7) After subsection (i) insert the following new subsection (j):

"(j) The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

SEC. 3. Section 702 of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-1) is amended to read as follows:

Equal Employment  
Opportunity Act  
of 1972.

Definitions.  
80 Stat. 662.

80 Stat. 408.

68A Stat. 163.  
26 USC 501.

"Religion."

## "EXEMPTION

Enforcement.	<p>"SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."</p> <p>SEC. 4. (a) Subsections (a) through (g) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5(a)-(g)) are amended to read as follows:</p>
42 USC 2000e-2, 2000e-3. Charges.	<p>"SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.</p> <p>"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.</p>
Penalty.	<p>"(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier termi-</p>
State enforcement proceedings, deferral period.	



nated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

“(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

“(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Filing.

“(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed

Civil action.



"(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

28 USC app.  
Relief.

"(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a)."

Back pay  
liability.

(b)(1) Subsection (i) of section 706 of such Act is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

78 Stat. 257.  
42 USC 2000e-3.  
78 Stat. 259.  
42 USC 2000e-5.

(2) Subsection (j) of such section is amended by striking out "subsection (e)" and inserting in lieu thereof "this section".

SEC. 5. Section 707 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

42 USC 2000e-6.

"(c) Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of  
functions.

"(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

80 Stat. 394;  
85 Stat. 574.  
5 USC 901.

"(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act."

Authority.

SEC. 6. Subsections (b), (c), and (d) of section 709 of the Civil

Ante, p. 104.

a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

“(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

“(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

“(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

28 USC app.

Jurisdiction.

62 Stat. 937;  
74 Stat. 912;  
76A Stat. 699.

Judge, designation.

State and local  
agencies,  
cooperation.

Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e-8(b)-(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

Recordkeep-  
ing; reports.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

State and  
Federal  
agencies,  
coordination.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements



with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

SEC. 7. Section 710 of the Civil Rights Act of 1964 (78 Stat. 264; 42 U.S.C. 2000e-9) is amended to read as follows:

#### "INVESTIGATORY POWERS

"SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply."

SEC. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act is amended by inserting the words "or applicants for membership" after the word "membership".

(c) (1) Section 704(a) of such Act is amended by inserting a comma and the following: "or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs," after "employment agency".

(2) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs.", and (B) inserting a comma and the words "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee" before the word "indicating".

(d) Section 705(a) of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e-4(a)) is amended to read as follows:

"SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States

61 Stat. 150;  
84 Stat. 930.  
42 USC 2000e-3.  
Equal Employment Opportunity Commission.

Term.

86 STAT. 110

5 USC 101

et seq.

5 USC 5101,

5331.

5 USC 5332

note.

80 Stat. 415,

425, 473, 528.

78 Stat. 258.

42 USC 2000e-4.

General Counsel,

appointment.

Ante, p. 104.

Ante, p. 107.

Repeal.

42 USC 2000e-13.

62 Stat. 688;  
65 Stat. 721.

80 Stat. 460;  
84 Stat. 1604;  
85 Stat. 625.

Repeal.

84 Stat. 968.

Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(e) (1) Section 705 of such Act is amended by inserting after subsection (a) the following new subsection (b):

"(b) (1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

"(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title."

(2) Subsections (e) and (h) of such section 705 are repealed.

(3) Subsections (b), (c), (d), (i), and (j) of such section 705, and all references thereto, are redesignated as subsections (c), (d), (e), (h), and (i), respectively.

(f) Section 705(g) (6) of such Act, is amended to read as follows:

"(6) to intervene in a civil action brought under section 706 by an aggrieved party against a respondent other than a government, governmental agency or political subdivision."

(g) Section 714 of such Act is amended to read as follows:

"FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

"SEC. 714. The provisions of sections 111 and 1114, title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life."

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

"(58) Chairman, Equal Employment Opportunity Commission."

(b) Clause (72) of section 5315 of such title is amended to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

"(131) General Counsel of the Equal Employment Opportunity Commission."

SEC. 10. Section 715 of the Civil Rights Act of 1964 is amended to read as follows:

78 Stat. 265.  
42 USC 2000e-14  
note.

"EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

"SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section."

Report to  
President and  
Congress.

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new section:

Ante, p. 103.

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

80 Stat. 378.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

Enforcement;  
rules and  
regulations.

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

National and  
regional plan,  
annual review.



86 S. 112

Progress reports,  
publication.

“(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and  
“(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

“(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

“(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

Librarian of  
Congress,  
authority.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

42 USC 2000e  
note.

“(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

Ante, p. 104.

78 Stat. 259.  
42 USC 2000e-  
5.

“(d) The provisions of section 706 (f) through (k), as applicable, shall govern civil actions brought hereunder.

USC prec.  
title 1.

“(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure non-discrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.”

80 Stat. 453;  
84 Stat. 1955.

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

- (1) striking out the word “and” at the end of paragraph (9);
- (2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word “and”; and
- (3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS-16, GS-17, and GS-18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

SEC. 13. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is further amended by adding at the end thereof the following new section: Ante, p. 111.

"SPECIAL PROVISION WITH RESPECT TO DENIAL, TERMINATION, AND  
SUSPENSION OF GOVERNMENT CONTRACTS

"SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: *Provided*, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: *Provided further*, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan."

80 Stat. 384.

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.

Effective date.

Ante, p. 104.

Approved March 24, 1972.

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LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-238 (Comm. on Education and Labor) and No. 92-899 (Comm. of Conference).

SENATE REPORTS: No. 92-415 accompanying S. 2515 (Comm. on Labor and Public Welfare) and No. 92-416 (Comm. on Labor and Public Welfare) and No. 92-681 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 117 (1971): Sept. 15, 16, considered and passed House.

Vol. 118 (1972): Jan. 19-21, 24-28, 31, Feb. 1-4, 7-9,

14-18, 21, 22, considered and passed

Senate, amended, in lieu of S. 2515.

Mar. 6, Senate agreed to conference report.

Mar. 8, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 13:

Mar. 25, Presidential statement.



## EXECUTIVE ORDER

11246

### EQUAL EMPLOYMENT OPPORTUNITY

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

#### PART I - Nondiscrimination in Government Employment

SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice.

SEC. 102. The head of each executive department and agency shall establish and maintain a positive program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in Section 101.

SEC. 103. The Civil Service Commission shall supervise and provide leadership and guidance in the conduct of equal employment opportunity programs for the civilian employees of and applications for employment within the executive departments and agencies and shall review agency program accomplishments periodically. In order to facilitate the achievement of a model program for equal employment opportunity in the Federal service, the Commission may consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Part.

SEC. 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, creed, color, or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

SEC. 105. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this Part, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Part.

PART II - Nondiscrimination in  
Employment by Government Contractors  
and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration of Parts II and III of this Order and shall adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes thereof.

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of Sept. 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. , 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24 , 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of Sept. 24 , 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24 , 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SEC. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.



(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers of providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

SEC. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.



Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Secretary of Labor with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Secretary of Labor in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Order and of the rules, regulations, and orders of the Secretary of Labor issued pursuant to this Order. They are directed to cooperate with the Secretary of Labor and to furnish the Secretary of Labor such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

SEC. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency, to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor and the investigating agency shall report to the Secretary of Labor any action taken or recommended.

(b) The Secretary of Labor may receive and investigate or cause to be investigated complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order. If this investigation is conducted for the Secretary of Labor by a contracting agency, that agency shall report to the Secretary what action has been taken or is recommended with regard to such complaints.

SEC. 207. The Secretary of Labor shall use his best efforts, directly and through contracting agencies, other interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

SEC. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

#### Subpart D - Sanctions and Penalties

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may;

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have compiled or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the non-discrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Under rules and regulations prescribed by the Secretary of Labor, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under Subsection (a) (2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under Subsection (a) (5) of this Section for failure of a contractor or subcontractor to comply with the contract provisions of this Order.

SEC. 210. Any contracting agency taking any action authorized by this Subpart, whether on its own motion, or as directed by the Secretary of Labor, or under the rules and regulations of the Secretary, shall promptly notify the Secretary of such action. Whenever the Secretary of Labor makes a determination under this Section, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Secretary of Labor within such time as the Secretary shall specify.

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor or, if the Secretary so authorizes, to the contracting agency.

SEC. 212. Whenever a contracting agency cancels or terminates a contract, or whenever a contractor has been debarred from further Government contracts, under Section 209 (a) (6) because of noncompliance with the contract provisions with regard to nondiscrimination, the Secretary of Labor, or the contracting agency involved, shall promptly notify the Comptroller General of the United States. Any such debarment may be rescinded by the Secretary of Labor or by the contracting agency which imposed the sanction.

#### Subpart E -- Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.



**PART III - Non-Discrimination Provisions  
in Federally Assisted Construction  
Contracts**

**SEC. 301.** Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 203 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

**SEC. 302.** (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.



SEC. 303. (a) Each administering department and agency shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor, and to furnish the Secretary such information and assistance as he may require in the performance of his functions under this Order.

(b) In the event an applicant fails and refuses to comply with his undertakings, the administering department or agency may take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

(c) Any action with respect to an applicant pursuant to Subsection (b) shall be taken in conformity with Section 602 of the Civil Rights Act of 1964 (and the regulations of the administering department or agency issued thereunder), to the extent applicable. In no case shall action be taken with respect to an applicant pursuant to Clause (1) or (2) of Subsection (b) without notice and opportunity for hearing before the administering department or agency.

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of non-discrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

#### PART IV - Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order, except authority to promulgate rules and regulations of a general nature.

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403. (a) Executive Orders Nos. 10590 (January 18, 1955), 10722 (August 5, 1957), 10925 (March 6, 1964), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective 30 days after the date of this Order.

LYNDON B. JOHNSON

THE WHITE HOUSE,

September 24, 1965.

# # #

EXECUTIVE ORDER

11375

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AMENDING EXECUTIVE ORDER NO. 11246,  
RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

It is desirable that the equal employment opportunity programs provided for in Executive Order No. 11246 expressly embrace discrimination on account of sex.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered that Executive Order No. 11246 of September 24, 1965, be amended as follows:

(1) Section 101 of Part I, concerning nondiscrimination in Government employment, is revised to read as follows:

"SECTION 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

(2) Section 104 of Part I is revised to read as follows:

"SECTION 104. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the

basis of race, color, religion, sex or national origin. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission."

(3) Paragraphs (1) and (2) of the quoted required contract provisions in section 202 of Part II, concerning nondiscrimination in employment by Government contractors and subcontractors, are revised to read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin."

(4) Section 203 (d) of Part II is revised to read as follows:

"(d) The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require."

The amendments to Part I shall be effective 30 days after the date of this order. The amendments to Part II shall be effective one year after the date of this order.

LYNDON B. JOHNSON

THE WHITE HOUSE,

October 13, 1967.

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## OFFICE OF THE WHITE HOUSE PRESS SECRETARY

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THE WHITE HOUSE

EXECUTIVE ORDER 11478

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EQUAL EMPLOYMENT OPPORTUNITY  
IN THE FEDERAL GOVERNMENT

It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3. The Civil Service Commission shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order to assure that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate agency program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this Order.

Sec. 4. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

Sec. 5. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this Order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this Order.

Sec. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

RICHARD NIXON

THE WHITE HOUSE,

August 8, 1969.

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20250

September 23, 1969

SECRETARY'S MEMORANDUM NO. 1662

USDA Policy on Civil Rights

It is imperative that we renew and strengthen our efforts to insure equal access and opportunity in all aspects of our programs without regard to race, color, or national origin to the full extent of the law.

In the day-to-day carrying out of these responsibilities, the Assistant Secretary for Administration, under my direction, is assigned staff responsibility, working with my Special Assistant for Civil Rights, for the general direction, coordination, and implementation of all aspects of the Civil Rights program at the Department level.

Each program Assistant Secretary and Director, together with his respective line administrators, is assigned line responsibility for developing and implementing a comprehensive civil rights program to insure that the intent of the law and President Nixon's equal opportunity policy is effectively carried out in all our programs and activities.

I am, therefore, asking each program Assistant Secretary and Director, together with his agency heads, to take the following steps after appropriate consultation.

Training

To assist in fulfilling the intent of the law and in carrying out the President's policy, it is important that my staff, agency heads, and supervisory officers of the Department at all levels be given appropriate training in this important area.

The Director of Personnel will be responsible for developing adequate and appropriate training in the civil rights area for my staff, the agency heads, and their deputies.

Each agency head, after consultation with the Director of Personnel, will be responsible for developing and conducting training courses in this area for his division heads and regional, State, and major field office heads.

All of the training at this level of management is to be completed by June 30, 1970.

At the close of Fiscal Year 1970, a report will be submitted by each agency head through the Director of Personnel to the Assistant Secretary for Administration, indicating that this training for top management has been completed, together with a proposed program of civil rights training, to reach all other personnel during Fiscal Year 1971.

This report will be submitted no later than July 15, 1970.

### Evaluation

It is crucial that we develop a system for establishing base data and for measuring progress from that base in all our important and sensitive program areas to the end that we will know the quantity and quality of our services being delivered to minority groups.

Again, this effort will be the responsibility of the program Assistant Secretaries and Directors and the responsible agency head after adequate consultation with appropriate representatives of my staff so as to insure the highest degree of adequacy, consistency and uniformity possible in the data developed.

The Assistant Secretary for Administration will report to me on September 30, 1969, and each quarter thereafter on the work planned, underway, and accomplished in this area.

### Compliance

All employees of this Department are charged by law and regulation to conduct official business in such a manner that the Department does not directly or by implication:

- (1) Support, encourage, or condone the practice of segregation or other forms of discrimination.
- (2) Conduct programs in ways that permit economic barriers or social inhibitions to limit participation; or
- (3) Provide separate services for reasons of race, color, or national origin.



To assure this, I ask that you:

(1) Correct programs in which practices bar integration and thus allow or lead to participation only on a segregated basis. Each agency will review the activities of all offices for the existence of any practices that are or might lead to segregation and take immediate action for their elimination. Complete elimination of segregation and discrimination with regard to meetings, office space, and related facilities must be achieved now.

(2) Correct programs that have been conducted in ways that permit economic barriers or social inhibitions to limit participation of certain racial, color, or nationality groups, even though such programs are announced as available to all persons. Each agency head shall review every program of his agency to (a) identify those programs in which participation by members of minority groups is restricted because of economic barriers or social inhibitions; (b) develop and implement plans for changing existing programs or for creating new programs to remove or overcome these barriers and inhibitions.

(3) Correct programs in which service to specific racial, color, or nationality groups is inferior because of the failure of Department employees or cooperators to work across racial lines regardless of their own race, color, or nationality. Each agency head will immediately review the activities of all personnel to determine whether or not there are conditions preventing any employee from fully carrying out his assignment because of his own race, color, or nationality. Where these conditions exist the agency head will be responsible for: (a) identifying specific personnel and the circumstances involved, and (b) taking action to develop plans to overcome the conditions. The individual concerned must participate in identifying the barriers and in developing the plan of action to overcome them. The extent of this participation should be reported.

Each agency head will assign necessary staff to accomplish these reviews, and the agency head will submit a report to me through my Special Assistant for Civil Rights and the Assistant Secretary for Administration not later than March 31, 1970, stating that the three steps outlined above have been accomplished in his agency.

Similar reports will be submitted thereafter on June 30 and December 30 - showing that these standards are continuing to be met and if not, why.

### Employment

It is the policy of this Department to provide equal opportunity for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

Special efforts must be made to assure that job opportunities in the Department are made known to men and women of all races, religions, and ethnic backgrounds.

Equal employment opportunity must become an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of employees of the Department.

Provide for the prompt, fair, and impartial consideration of all complaints of discrimination on the basis of race, color, religion, sex, or national origin. Agencies shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include an impartial review within the agency and shall provide for appeal to the Civil Service Commission.

### Audits

The Inspector General will continue concerted efforts in the audit of significant program activities that have civil rights implications involving the various agencies. Audit efforts will encompass an evaluation of equal opportunity in both employment and program activities. Follow-up audits will verify the adequacy of corrective action directed by appropriate line officials.

### Investigations

The Inspector General will investigate complaints or other information which warrant such action.

### Law

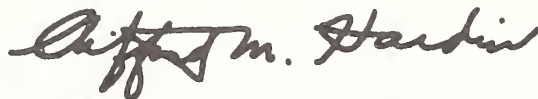
Each agency head will use the appropriate legal resources of this Department whenever necessary to reach the goals as outlined in this policy.

### Organization

Each agency head will organize to accomplish the objectives outlined above most effectively, and review the current Civil Rights procedures for his agency to insure conformance with this policy. In any case, however, each administrator will assume personal responsibility to insure that the intent of the law and the President's policy are carried out.

The following Secretary's Memorandums are hereby superseded:

Memorandum of May 3, 1961 signed by J.M.R.  
"Federal Participation in Segregated Meetings" of  
June 23, 1964.  
Secretary's Memorandum No. 1560 of July 10, 1964.  
Secretary's Memorandum No. 1572 of April 22, 1965.  
"Use of Racial Data" of May 18, 1965.  
Secretary's Memorandum No. 1560, Supplement 4 of  
January 17, 1966.  
"Federal Participation in Segregated Meetings" of  
September 28, 1967.  
Secretary's Memorandum No. 1574, Revised of  
February 8, 1968.



Secretary of Agriculture

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20250

July 27, 1970

SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 1

USDA Policy on Civil Rights

1. PURPOSE. These guidelines are issued to assist program Assistant Secretaries and Directors and Agency Administrators in carrying out the civil rights evaluation function assigned to them by the evaluation section Secretary's Memorandum No. 1662.

In the development or modification of systems to measure the quantity and quality of services being delivered to minority groups through programs of USDA, each Agency Head is requested to consult with the Civil Rights Evaluation Staff in advance.

It is suggested that data on minority group participation be evaluated within each agency by program managers in examining agency progress toward civil rights objectives.

2. PROCEDURE. Steps to be taken by agencies under the direction of the Assistant Secretaries and Directors and with the counsel of the Civil Rights Evaluation Staff to assure that USDA programs and delivery systems are providing equal opportunity for all potential beneficiaries are:

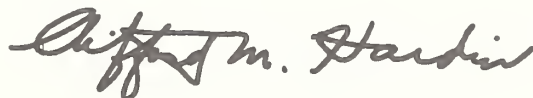
- A. Establish measures of the numbers of minority groups in the population eligible to participate in each program. These measures may be derived from standard statistical sources such as the Censuses of Agriculture and Population and Housing and agency records.
- B. Establish and maintain a system for collecting and reporting racial data on participation in USDA programs. The system should obtain racial data on all significant aspects of program participation including participation in local committees by the persons intended to ultimately benefit. Data should be based on reviewable records. The system should provide for identification of White, Negro or Black, American Indian, Spanish Surname,



Oriental and Other. Records of services to minority and majority group people and the extent to which such services are rendered across racial lines will be included. Racial data and statistics shall be maintained under safeguards which will prevent their use for discriminatory purposes.

The system should be designed to obtain racial data for all counties in which the program operates, though county data may be retained in the Federal agency office for reference as needed.

- C. Periodically within each fiscal year, conduct a statistical review of each program to evaluate minority group participation and evaluate extent of conformance to equal opportunity objectives and measurable targets. It is recognized that the programs of some agencies are less susceptible than others to statistical measurement of program participation by race. However, all agencies are expected to exercise ingenuity in exploring aspects of their programs or related activities for which the development of statistical measures will contribute to assuring opportunity for all eligible participants to take part in agency programs.
- D. Submit an annual Civil Rights Evaluation Report to the Secretary through the Assistant Secretary for Administration on the status and activities of programs and statistical systems designed to measure progress in meeting civil rights objectives. This report should include information on specific actions taken to insure that opportunity to participate in Department programs is made available to all members of minority groups who are eligible to participate. The report should be submitted as of June 30 each year. However, agencies who maintain a calendar year minority participation data system may establish a mutually satisfactory alternative reporting date with the Civil Rights Evaluation Staff.



Secretary of Agriculture

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**OFFICE OF THE SECRETARY**  
WASHINGTON, D. C. 20250

May 28, 1971

**SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 2**

**USDA Policy on Civil Rights**

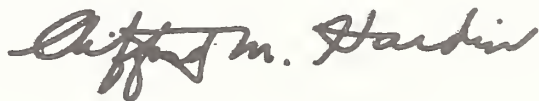
In Secretary's Memorandum No. 1662 I directed that we renew and strengthen our efforts to insure equal access to all USDA programs without regard to race, color, or national origin. We need to see that all eligible people, particularly minorities and the underprivileged, are informed of all USDA program benefits and of the protection against discrimination contained in our regulations.

I am now directing each Agency head to develop a public notification plan which will include the following:

- Each USDA office and recipient which distributes program benefits will take specific action to advise minorities of program availability and the requirement for nondiscrimination.
- Each USDA and cooperating office serving the public will prominently display the nondiscrimination poster, "And Justice for All". A notice of nondiscrimination will also be posted at all public outdoor recreation areas.
- Each Agency will inform minorities of new programs and program changes by mailing information to "grass roots" organizations listed by the Assistant to the Secretary for Civil Rights.
- Each Agency will promptly notify the Office of Information of any new programs or program changes. The Office of Information will maintain master lists of minority group media and will disseminate to them the information provided by the Agencies.
- Each Agency will submit Civil Rights "success stories" to the Office of Information for dissemination to the media.

- All informational materials released to the public will, as appropriate, contain a statement that the program or activity will be conducted on a nondiscriminatory basis. Where appropriate, photos and other graphics will be used to convey the message of equal opportunity. This requirement will apply to materials published and distributed by either the Agency or its non-Federal cooperators.

No later than June 30, 1971, please submit a plan for accomplishing the above steps to the Assistant to the Secretary for Civil Rights for approval. Indicate those areas already covered by Agency procedures.

A handwritten signature in dark ink, reading "Clifford M. Hardin". The signature is written in a cursive, flowing style with a large initial 'C'.

Secretary of Agriculture

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20250

June 28, 1971

SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 3

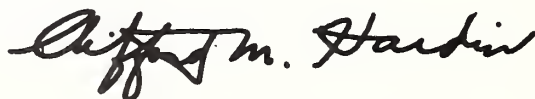
USDA Policy on Civil Rights

My Memorandum No. 1662, September 23, 1969, asked that each Agency Head, after consultation with the Director of Personnel, develop and conduct training courses in civil rights for division heads and regional, State, and major field office heads. Training for top management was to have been completed at the close of FY 1970. Training for all other supervisory personnel was to be completed by June 30, 1971.

The Department's training effort in civil rights has been beneficial in increasing awareness by supervisors of minority group problems and in improving the delivery of benefits and services of the Department of Agriculture without regard to race, color, religion, or national origin. The U.S. Commission on Civil Rights recently noted the Department's civil rights training programs as an example of those Federal Agencies which were "making good faith efforts to improve aspects of their civil rights performance."

The Department of Agriculture must continue in this effort. I urge each Agency Head to be mindful of his responsibility to continue to promote the civil rights objectives outlined in my Memorandum No. 1662. Civil rights training will be continued. Those supervisors who did not receive this training, either because they were absent when such training was offered or because they became employees after formal training ended, must be trained. It is important that civil rights training be made a part of on-going Agency training programs, particularly those involving managerial or executive development.

Each Agency shall develop a plan of action for continuing civil rights training. The report on civil rights training due on July 15, 1971, as requested by Personnel Bulletin 713-21, December 10, 1970, should include your action plan.



Secretary of Agriculture



UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

December 2, 1971

SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 4

Civil Rights Considerations of Proposed and Pending Legislation

Office of Management and Budget Circular No. A-19, Revised, Transmittal Memorandum No. 1, directs the Department to include civil rights and environmental impact considerations in its analysis of proposed and pending legislation where appropriate.

The purpose of this supplement is to prescribe the inclusion of civil rights considerations in the analysis of proposed and pending legislation where appropriate. The Department's policy on including environmental impact statements is contained in Secretary's Memorandum No. 1695, Supplement 4, Revised.

Legislation under review should be carefully studied from the standpoint of whether it carries out the provisions of existing law and is consistent with Administration policies and directives on civil rights. Legislative reports and draft bills should contain appropriate recommendations, statements, or provisions to effect these purposes.

Inquiries concerning this procedure should be directed to the Chief, Legislative and Financial Reporting Division, Office of Budget and Finance, extension 3671.



J. Phil Campbell  
Acting Secretary

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20250

May 18, 1972

SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 5

USDA Policy on Civil Rights

Progress in the delivery of USDA program benefits to minority groups has been uneven among Agencies and programs, with some Agencies still far short of achieving parity in access to and participation in programs.

Existing Agency reporting efforts are intended to facilitate a comparison of present participation with past performance in order to show progress. While this provides useful information, we need to develop an improved system whereby parity of participation is defined and participation targets are established in advance of the program year.

Beginning with Fiscal Year 1973, USDA Agencies with Title VI or direct assistance programs will incorporate targets for the delivery of program benefits to minority groups into their advance program planning procedures. The systematic inclusion of minority considerations in formal program planning efforts will serve two major purposes: (1) promote parity of participation by minority groups in the benefits of USDA programs, and (2) provide approved targets against which performance can be measured.

I have directed the Office of Equal Opportunity to assume responsibility, with the cooperation of the Office of Planning and Evaluation, for developing and issuing procedural instructions to accomplish this purpose. Procedures will include:

- (1) The definition by Agencies of parity of participation in their programs, development of proposals of specific participation targets for each Title VI and direct assistance program, and submission of these proposals to their Assistant Secretary or Director for approval in advance of the program year;
- (2) The review of Agency proposals by the Director of the Office of Equal Opportunity who will make recommendations to each Assistant Secretary or Director;

- (3) The recommendation of planned targets by the Assistant Secretaries and Directors for approval by the Secretary; and
- (4) The revision of Agency reporting systems, to the extent necessary, to provide recurring status reports of performance and progress against approved targets. In the meantime, Agencies are expected to comply with the requirements of Supplement 1 of Secretary's Memorandum No. 1662, until further notice.

Periodic follow-up on Agencies' progress toward targets will be scheduled by Assistant Secretaries and Directors. The Office of Equal Opportunity will provide periodic evaluation reports to the Secretary, Assistant Secretaries and Directors on Agency performance.

  
Secretary of Agriculture

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20250

October 18, 1972

SECRETARY'S MEMORANDUM NO. 1662, SUPPLEMENT 6

Departmental Upward Mobility Program

The Equal Employment Opportunity Act of 1972 requires each Federal Department and Agency to provide for programs of training and education which will afford employees an opportunity to acquire skills and abilities needed to compete for advancement to positions of greater responsibility.

The Secretary's Task Force on Personnel Policy Evaluation and the Secretary's Task Force on Upward Mobility found shortcomings in current training, educational and job opportunities as they apply to all employees in the lower grades. These Task Forces pointed out the need for a coordinated Department-wide program to provide employees in the lower grades with training, educational and job opportunities.

The Task Force findings are reinforced by current manpower restrictions which make it imperative that the Department uses to the best advantage its existing manpower resources. Therefore, I am hereby establishing a Departmental Upward Mobility Program. The Departmental Upward Mobility Program shall be composed to two components: (1) a Departmental Upward Mobility Board and (2) an Upward Mobility Unit in the Office of Personnel.

In order to assure understanding and effective communications between employees and management in this area, an Upward Mobility Advisory Board is established. This Board will be composed of the Under Secretary, Chairman, three Assistant Secretaries or Group Directors, as designated, the Director of the Office of Personnel, the Director of the Office of Equal Opportunity, and such employee representatives of interested employee groups and such other employees as the Secretary may designate. The Office of Personnel will provide administrative support and will designate an Executive Secretary to the Board.

The Upward Mobility Advisory Board will monitor and review activities of the Upward Mobility Program and advise, as appropriate, on program content and resources. The Board will also assure that necessary policies and procedures are in effect to achieve the intent of the



program. The Board will make an annual report to the Secretary on the Upward Mobility Program. Pursuant to the policies and procedures established by the Board, the Director of Personnel is directed to implement a program of adult basic education and testing, job skills training, professional education, job restructuring and employee guidance to upgrade the skills and provide opportunities for all employees in the lower grades.

The Department-wide Upward Mobility Program, to be directed and coordinated by the Director of Personnel with the cooperation of the agencies, will require substantial, long-term manpower and financial resource commitments by the agencies. The Assistant Secretaries and Group Directors are expected to assist in this undertaking by providing necessary resources through their agencies to assure adequate support to the Department's Upward Mobility Program.

  
Secretary of Agriculture

RULES AND REGULATIONS  
AS AMENDED

TITLE 7 - AGRICULTURE

PART 15 - NONDISCRIMINATION

*Subpart A - Nondiscrimination in Federally -  
Assisted Programs of the Department of  
Agriculture - Effectuation of Title VI of  
the Civil Rights Act of 1964*

*Subpart B - Nondiscrimination - Direct USDA  
Programs and Activities*

*Subpart C - Rules of Practice and Procedure  
for Hearings, Decisions and Administrative  
Review Under the Civil Rights Act of 1964*

As in Effect January 24, 1969  
(Reprinted from Title 7 -  
Code of Federal Regulations)

## PART 15—NONDISCRIMINATION

### Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

- Sec.
- 15.1 Purpose and application of part.
  - 15.2 Definitions.
  - 15.3 Discrimination prohibited.
  - 15.4 Assurances required.
  - 15.5 Compliance.
  - 15.6 Complaints.
  - 15.7 Intimidatory or retaliatory acts prohibited.
  - 15.8 Procedure for effecting compliance.
  - 15.9 Hearings.
  - 15.10 Decisions and notices.
  - 15.11 Judicial review.
  - 15.12 Effect on other regulations; forms and instructions.

#### APPENDIX

#### Subpart B—Nondiscrimination—Direct USDA Programs and Activities

- 15.50 Applicability.
- 15.51 Discrimination prohibited.
- 15.52 Complaints.

#### Subpart C—Rules of Practice and Procedure for Hearings, Decisions and Administrative Review Under the Civil Rights Act of 1964

##### GENERAL INFORMATION

- 15.60 Scope of rules.
- 15.61 Records to be public.
- 15.62 Definitions.
- 15.63 Computation of time.
- 15.64 Parties.
- 15.65 Appearance.
- 15.66 Complainants not parties.
- 15.67 Intervener.
- 15.68 Ex parte communications.

##### FORM, EXECUTION, FILING AND SERVICE OF DOCUMENTS

- 15.71 Form of documents to be filed.
- 15.72 Filing.
- 15.73 Service.
- 15.74 Date of service.

##### INITIAL NOTICE AND RESPONSE

- 15.81 How proceedings are commenced.
- 15.82 Notice of hearing and response thereto.
- 15.83 Notice of opportunity to request a hearing and response thereto.
- 15.84 Answer.
- 15.85 Amendment of notice or answer.
- 15.86 Consolidated or joint hearings.

#### HEARING OFFICER

- Sec.
- 15.91 Who presides.
  - 15.92 Designation of hearing officer.
  - 15.93 Time and place of hearing.
  - 15.94 Disability of hearing officer.
  - 15.95 Responsibilities and duties of hearing officer.

#### MOTIONS

- 15.101 Form and content.
- 15.102 Responses to motions.
- 15.103 Disposition of motions.

#### HEARING PROCEDURES

- 15.110 Prehearing conferences.
- 15.111 Purpose of hearing.
- 15.112 Statement of position and brief.
- 15.113 Testimony.
- 15.114 Exhibits.
- 15.115 Affidavits.
- 15.116 Depositions.
- 15.117 Evidence.
- 15.118 Cross-examination.
- 15.119 Objections.
- 15.120 Exceptions to rulings of hearing officer unnecessary.
- 15.121 Official notice.
- 15.122 Offer of proof.
- 15.123 Appeals from ruling of hearing officer.
- 15.124 Admissions as to facts and documents.

#### THE RECORD

- 15.131 Official transcript.
- 15.132 Record for decision.

#### POSTHEARING PROCEDURES

- 15.135 Posthearing briefs.
- 15.136 Decisions and notices.
- 15.137 Exceptions to initial or proposed decision.
- 15.138 Review of initial decision.
- 15.139 Oral argument.
- 15.140 Service of decisions.
- 15.141 Contents of decision.
- 15.142 Content of orders.
- 15.143 Decision where financial assistance affected.

### Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

**AUTHORITY:** The provisions of this Subpart A are issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1; and the laws referred to in the Appendix.

**SOURCE:** The provisions of this Subpart A appear at 29 F.R. 16274, Dec. 4, 1964; 29 F.R. 16966, Dec. 11, 1964, unless otherwise noted.

#### § 15.1 Purpose and application of part.

(a) The purpose of the regulations in this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") to

the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Agriculture or any Agency thereof.

(b) The regulations in this part apply to any program for which Federal financial assistance is authorized under a law administered by the Department, including the federally assisted programs and activities listed in the Appendix to this part. They apply to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulations pursuant to an application approved prior to such effective date. The regulations in this part do not apply to (1) any Federal financial assistance by way of insurance or guaranty contract, (2) money paid, property transferred, or other assistance extended under any such program before the effective date of the regulations in this part, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice, under any such program, of any employer, employment agency, or labor organization, except where a primary objective of the Federal financial assistance is to provide employment. The fact that a program or activity is not listed in the Appendix, shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

#### § 15.2 Definitions.

(a) "Department" means the Department of Agriculture, and includes each of its operating agencies and other organizational units.

(b) "Agency" means any service, bureau, agency, office, administration, instrumentality of or corporation within the United States Department of Agriculture extending Federal financial assistance to any program or activity.

(c) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act in his stead under the regulations in this part.

(d) "Hearing Officer" means a hearing examiner appointed pursuant to the Administrative Procedure Act (5 U.S.C. 1000 et seq.) and designated to hold hearings under the regulations in this part or any person authorized to hold a hearing and make a final decision under the regulations in this part.

(e) "Recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(f) "Primary recipient" includes any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(g) "Federal financial assistance" or "financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(h) "Grant, loan or contract" includes any grant, loan agreement or commitment to loan, contract or agreement to provide financial assistance or any other arrangement between the Department or any Agency and a recipient of financial assistance.

(i) "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.



(j) "Applicant" means one who submits an application, request, or plan required to be approved by an Agency, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(k) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(l) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

#### § 15.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which these regulations apply. These regulations apply, but are not restricted, to unequal treatment in priority, quality, quantity, methods or charges for service, use, occupancy or benefit, participation in the service or benefit available, or in the use, occupancy or benefit of any structure, facility, or improvement.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which the regulations in this part apply may not, directly or through contractual or other arrangements on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit, to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege, enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the

objectives of the program as respects individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in these regulations does not limit the applicability of the provisions of paragraph (a) of this section.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which the regulations in this part apply is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under the program including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities. This paragraph applies to programs where a primary objective of the Federal financial assistance is (1) to reduce unemployment, (2) to assist individuals in meeting expenses incident to the commencement or continuation of their education or training, or (3) to provide work experience which contributes to education or training.

(d) *Examples.* In order that all parties may have a clear understanding of the applicability of the regulations in this part to their activities, there are listed in this section programs and activities together with illustrations, by way of example only, of types of activity covered by the regulations in this part. These illustrations and examples, however, are not intended to be all inclusive. The fact that a particular program is not listed does not, of course, indicate that it is not covered by the regulations in this part. Moreover, the examples set forth with respect to any particular listed program are not limited to that program alone and the prohibited actions described may also be prohibited in other programs or activities whether or not listed below.

(1) *Cooperative agricultural extension program.* (i) Discrimination in making available or in the manner of making available instructions, demonstrations, information, and publications offered by or through the Cooperative Extension Service;

(ii) Discrimination in the use in any program or activity of the Cooperative Extension Service of any facility, including offices, training facilities, lecture halls, or other structures or improvements; or

(iii) Discrimination in training activities, admission to or participation in fairs, competitions, field days, and encampments, conducted or sponsored by, or in which the Cooperative Extension Service participates.

(2) *Rural electrification and rural telephone programs.* (i) Refusal or failure by a borrower to accept applications for membership or applications to purchase shares of stock, or discrimination by a borrower in the terms and conditions of membership or stock ownership, where such membership or stock ownership is a condition pre-requisite to the furnishing of electric or telephone service by the borrower, or to the receipt of any benefits or advantages related to such service;

(ii) Refusal or failure by a borrower to extend, or discrimination by a borrower in the extension of, electric or telephone service to unserved persons;

(iii) Denial by a borrower to any person of the benefits of improvement, expansion or upgrading, or discrimination by a borrower among consumers or subscribers in improving, expanding or upgrading, of electric or telephone service;

(iv) Discrimination by a borrower in respect of rates, or terms or conditions of, service among consumers or subscribers;

(v) Exclusion by a borrower of any member or stockholder, if the borrower is a cooperative or mutual type of corporation, from participation in any meeting of members or stockholders of the borrower, discrimination among its members or stockholders in respect of the exercise of any of their rights as members or stockholders, or in the manner of the exercise of such rights; or

(vi) Exclusion by a borrower of any consumer or subscriber from, denial by a borrower to any consumer or subscriber of the use of, or discrimination by a borrower against any consumer or subscriber in his use of, any of the borrower's facilities.



(3) *Direct distribution program.* (1) Exclusion of an otherwise eligible recipient agency (school, summer camp for children, institution, welfare agency or disaster organization) or person from participation in the direct distribution program.

(ii) Discrimination in the allocation of food to eligible persons.

(iii) Discrimination in the manner in which or the place or times at which foods donated under the program are distributed by recipient agencies to eligible persons.

(iv) Segregation of persons served in different meal periods or by different seating or serving of different food or different size portions by recipient agencies serving prepared meals containing donated foods.

(4) *National school lunch program.* (1) Discrimination by a State agency in the selection of schools to participate in the program or in the assignment to schools of rates of reimbursement.

(ii) Exclusion of any child from participation in the program.

(iii) Discrimination by school officials in the selection of children to receive free or reduced price lunches.

(iv) Segregation of participating children in different lunch periods or different seating, and discrimination by serving different food or different size portions.

(v) Failure to offer free and reduced-price lunches, on an equitable basis in schools of a school district in which children are assigned to schools on the basis of race, color, or national origin.

(5) *Food stamp program.* (1) Discrimination by a State agency in certifying households as eligible for the program.

(ii) Segregation or other discrimination in the manner in which or the times at which eligible households are issued food coupons.

(6) *Special milk program for children.* (1) Discrimination by a State agency in the selection of schools and child-care institutions to participate in the program.

(ii) Discrimination by a State agency in the selection of needy schools to receive reimbursement for milk served free.

(iii) Discrimination by a State agency in the assignment of reimbursement rates to schools and child-care institutions, or in the adjustment of such rates, or in fixing allowable distribution costs.

(iv) Exclusion of any child from participation in the program and segregation of participating children in different serving periods or different places of service.

(v) Discrimination by school officials or child-care institutions in the selection of children to receive free milk.

(7) *Price support programs carried out through producer associations or cooperatives or through persons who are required to provide specified benefits to producers.* (1) Denial of the benefits of price support for a producers commodity.

(ii) Denial of membership or stock ownership to any producer by any association or cooperative.

(iii) Discrimination among producers in the manner of making or paying any price support advances, loans, or payments.

(iv) Discrimination in the fees or charges collected from or in the net gains distributed to producers.

(v) Discrimination in the use of facilities and services generally made available to members or patrons under the price support program.

(8) *Forest service programs.* (1) Refusal or failure by a recipient of a permit or lease to provide to any person the benefits from the use of land administered by the Forest Service, the resources therefrom, or improvements thereon.

(ii) Refusal or failure by any recipient to provide to any person the benefits from Federal payments based on a share of the receipts from lands administered by the Forest Service.

(iii) Refusal or failure by any recipient to provide to any person the benefits from Federal assistance in cooperative programs for the protection, development, management, and use of forest resources.

(iv) Refusal or failure by any cooperator or other recipient to provide to any person the benefits from Federal assistance through grants or advances of funds for research.

(9) *Farmers Home Administration programs—*(1) *Direct soil and water loans to association.* (a) A borrower's denial of, or discrimination in furnishing, services under a program or activity financed wholly or partially with the aid of the loan, as in the case of a water supply system.

(b) A borrower's denial of, or discrimination or segregation in permit-

ting, the use of facilities which are part of a project financed wholly or partially with the aid of the loan, as in the case of a golf course, swimming pool, tennis courts, parking areas, lounges, dining rooms, and rest rooms of a recreation association.

(c) Discrimination by a borrower in the terms and conditions of membership or stock ownership, or refusal or failure of a borrower to accept applications for membership or for purchase of shares of stock, or discrimination by a borrower in acting or failing to act upon such applications, where such membership or stock ownership is a pre-requisite to the participation in services furnished by, or the use of facilities of, the borrower which are financed wholly or partially with the aid of the loan or to the receipt of any benefits or advantages related to such services or the use of such facilities.

(d) Denial or impairment by a borrower of any person's rights as a member or stockholder of the borrower, or borrower's discrimination against or segregation of persons in the exercise of their rights as members or stockholders of the borrower.

(ii) *Direct senior citizens rental housing loans to private nonprofit corporations and consumer cooperatives.* (a) A borrower's exclusion of any person from, discrimination in the terms and conditions of eligibility for, or discrimination against or segregation of any person in, the use and occupancy of the housing and related facilities financed wholly or partially with the aid of the loan.

(b) Discrimination by a borrower in the terms and conditions of membership or stock ownership, or refusal or failure of a borrower to accept applications for membership or for purchase of shares of stock, or discrimination by a borrower in acting or failing to act upon such applications, where such membership or stock ownership is a condition of eligibility for use and occupancy of the housing and related facilities financed wholly or partially with the aid of the loan or to the receipt of any benefits or advantages related to such housing or facilities.

(c) Denial or impairment by a borrower of any person's rights as a member or stockholder of the borrower, or a borrower's discrimination against or segregation of persons in the exercise of their

rights as members or stockholders of the borrower.

(10) *Cooperative State research programs.* (i) Discrimination in making available information whether published or provided through public or private statement, correspondence, demonstration or field day.

(ii) Discrimination in participation in any cooperative research program or project.

(iii) Discrimination in the use of any facility, including offices, laboratories, or other structures, or research plots or fields.

(iv) Discrimination in employment of graduate students to conduct research when such students receive substantial research training benefits as a result of such employment.

#### § 15.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which these regulations apply, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to the regulations in this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The Agency shall specify the form of the foregoing assurances for each program and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, successors in interest and



other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) The assurance required in the case of a transfer of real property, except where covered by subparagraph (3) of this paragraph, shall be inserted in the instrument effecting the transfer of any such land, together with any improvements located thereon, and shall consist of (i) a condition coupled with a right to be reserved to the Department to revert title to the property in the event of breach of such nondiscrimination condition during the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, and (ii) a covenant running with the land for the same period. In the event a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

(b) *Continuing State programs.* Every application by a State or a State agency, including a State Extension Service but not including an application for aid to an institution of higher education, to carry out a program involving continuing Federal financial assistance to which the regulations in this part apply shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to the regulations in this part, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the

Agency to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to the regulations in this part, including methods of administration which give reasonable assurance that any noncompliance indicated in the statement under subparagraph (1) of this paragraph will be corrected.

(c) *Assurances from institutions.* The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the Agency, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(d) *Recipients other than applicants.* Each recipient not required to submit an application for Federal financial assistance, shall furnish, as a condition to the extension of any such assistance, an assurance or statement as is required of applicants under paragraphs (a), (b) (1) and (2) of this section.

(e) *Elementary and secondary schools.* The requirements of paragraphs (a), (b), or (d) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the U.S. Commissioner of Education determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan; in any case of continuing

Federal financial assistance the said Commissioner may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order. [29 F.R. 16274, Dec. 4, 1964, as amended at 32 F.R. 3967, Mar. 11, 1967]

#### § 15.5 Compliance.

(a) *Cooperation and assistance.* Each Agency shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with the regulations and this part and shall provide assistance and guidance to recipients to help them comply voluntarily with the regulations in this part. As a normal part of the administration of programs covered by the regulations in this part, designated personnel will in their program reviews and other activities or as specifically directed by the Agency, review the activities of recipients to determine whether they are complying with the regulations in this part. Reports by such personnel shall include statements regarding compliance and instances, if any, of noncompliance. In the event of noncompliance, the Agency shall seek to secure voluntary compliance by all appropriate means.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Agency timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Agency may determine to be necessary to ascertain whether the recipient has complied or is complying with the regulations in this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under the regulations in this part.

(c) *Access to sources of information.* Each recipient shall permit access by authorized employees of this Department during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities

as may be pertinent to ascertain compliance with the regulations in this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of the regulations in this part and their applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Department or its Agencies finds necessary to apprise such persons of the protections against discrimination assured them by the Act and the regulations in this part.

#### § 15.6 Complaints.

Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by the regulations in this part may by himself or by an authorized representative file with the Secretary or any Agency a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Agency or the Secretary. Such complaint shall be promptly referred to the Office of the Inspector General. The complaint shall be investigated in the manner determined by the Inspector General and such further action taken by the Agency or the Secretary as may be warranted.

#### § 15.7 Intimidatory or retaliatory acts prohibited.

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or the regulations in this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulations in this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of the regulations in this part, including the

conduct of any hearing or judicial proceeding arising thereunder.

**§ 15.8 Procedure for effecting compliance.**

(a) *General.* If there appears to be a failure or threatened failure to comply with the regulations in this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with the regulations in this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, upon a finding, in accordance with the procedure hereinafter prescribed, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other Titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 15.4.* If an applicant fails or refuses to furnish an assurance required under § 15.4 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of the regulations in this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall become effective until (1) the Agency has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with the requirement imposed by or pursuant to the regulations in this part, (3) the

action has been approved by the Secretary pursuant to § 15.10(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate, having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Secretary has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least ten days from the mailing of such notice to the recipient or other person. During this period of at least ten days, additional efforts shall be made to persuade the recipient or other person to comply with the regulations in this part and to take such corrective action as may be appropriate.

**§ 15.9 Hearings.**

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required under the regulations in this part, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary or the Agency that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hear-



ing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and the regulations in this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the hearing officer or by the Secretary unless it is determined that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.*

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure promulgated by the Secretary as not inconsistent with this section, relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these regulations in this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity

shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these regulations with respect to two or more programs to which the regulations in this part apply, or noncompliance with the regulations in this part and the regulations of one or more other Federal Departments or Agencies issued under Title VI of the Act, the Secretary may, by agreement with such other Departments or Agencies, where applicable provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with the regulations in this part. Final decisions in such cases, insofar as the regulations in this part are concerned, shall be made in accordance with § 15.10.

#### § 15.10 Decisions and notices.

(a) *Decision by hearing officer or Secretary.* (1) The hearing officer shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings, and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. The applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Secretary his exceptions to the initial decision, with his reasons therefor.

(2) In the absence of exceptions, the Secretary may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Secretary.

(b) *Decisions on record or review.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing officer pursuant to paragraph (a), the applicant or recipient



shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Secretary shall be given in writing to the applicant or recipient, and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 15.9(a), a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to the regulations in this part with which it is found that the applicant or recipient has failed to comply.

(e) *Decision by Secretary.* The Secretary shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under the regulations in this part or the Act.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and the regulations in this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to the regulations in this part, or to have otherwise failed to comply with the regulations in this part, unless and until it corrects its noncompliance and satisfies the Agency that it will fully comply with the regulations in this part.

#### § 15.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

#### § 15.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions

heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which the regulations in this part apply, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by the regulations in this part, except that nothing in the regulations in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of the regulations in this part. Nothing in these regulations, however, shall be deemed to supersede any of the following including future amendments thereof: (1) Executive Orders 10925 and 11114 and regulations issued thereunder; or (2) Executive Order 11063 and regulations issued thereunder or any other regulations or instructions insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which the regulations in this part are inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each Agency shall issue and promptly make available forms and such implementing instructions and procedures consistent with the regulations in this part as may be necessary. Each Agency in making available Federal financial assistance to any program or activity may utilize contractual commitments in obtaining compliance with the regulations in this part, including obtaining compliance by recipients other than the contracting recipient.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of other Departments or Agencies of the Government with the consent of such Department or Agency, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and the regulations in this part (other than responsibility for final decision as provided in § 15.10) including the achievement of effective coordination and maximum uniformity within the Department and within the Execu-

tive Branch of the Government in the application of Title VI and these regulations to similar programs and in similar situations.

## APPENDIX

## PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF AGRICULTURE COVERED BY TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Payments for Marketing Service Work, 7 U.S.C. 1623.

Grants for basic scientific research, 42 U.S.C. 1891-1893.

Foreign Market Development Projects, 7 U.S.C. 1691-1724.

Advisory service studies for Farmer cooperatives, 7 U.S.C. 451-457.

Cooperative Agricultural Extension Work, 7 U.S.C. 341-349.

Educational Aspects of Agricultural Marketing Act, 7 U.S.C. 1623-1624.

Direct loans and planning advances under the Soil and Water Association Loan Program pursuant to Sections 306 and 314 of the Consolidated Farmers Home Administration Act of 1961, 7 U.S.C. 1926, 1944.

Direct loans under the Rural Rental and Cooperative Housing loan program, section 515(a) of the Housing Act of 1949, as amended, 42 U.S.C. 1485(a).

Loans, technical assistance, and preliminary advances under the Rural Renewal loan program pursuant to Section 32(e) of the Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1011(e).

Loans under the Resource Conservation and Development loan program pursuant to Section 32(e) of the Bankhead-Jones Farm Tenant Act and the Agricultural Appropriation Acts, 7 U.S.C. 1011(e) P.L. 88-250 and subsequent Appropriation Acts.

Direct loans under the Farm Ownership and Operating loan programs made for the purpose of installing or improving on farms recreation facilities available to the public, 7 U.S.C. 1922, 1923, 1941.

Loans to cooperative associations under Section 303, Economic Opportunity Act of 1964, P.L. 88-452, 78 Stat. 524.

Disaster and distress assistance through State and other agencies, 7 U.S.C. 1427.

Loans under the Watershed Protection and Flood Prevention loan program in addition to assistance by the Soil Conservation Service, 16 U.S.C. 1001-1008.

Special Milk Program, Act of July 1, 1958, as amended, 7 U.S.C. 1446 note.

School Lunch Program, National School Lunch Act, 42 U.S.C. 1751 *et seq.*

Food Stamp Program, Section 32 of the Act of August 24, 1935, 7 U.S.C. 612c. Food Stamp Act of 1964, 78 Stat. 703.

Direct Distribution Program, Section 416 of the Agricultural Act of 1949, as amended 7 U.S.C. 1431. Section 32 of the Act of August 24, 1935, 7 U.S.C. 612c. Sections 6 and 9 of National School Lunch Act, 42 U.S.C. 1755, 1758.

Hatch Act Experiment Stations, 7 U.S.C. 361a *et seq.*

Section 204(b) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1623.

Cooperative Forestry Research Act, P.L. 87-788.

Experiment Station Research Facilities, 7 U.S.C. 390-390k.

Watershed Protection Program, Watershed Protection and Flood Prevention Act of August 4, 1954, 16 U.S.C. 1001-1008.

Flood Prevention Program, Flood Control Act of December 22, 1944, 58 Stat. 887.

Resource Conservation and Development Program, Title III of the Bankhead-Jones Farm Tenant Act, as amended by Section 102 of the Food and Agriculture Act of 1962, 7 U.S.C. 1010-1012. Soil Conservation Act of April 27, 1935, 16 U.S.C. 590a-f.

Program of Technical Assistance, and Grants of Equipment and Material, and Plant Materials to Soil Conservation Districts, Soil Conservation Act of April 27, 1935, 16 U.S.C. 590a-f.

Rural Electrification and Rural Telephone Programs, Rural Electrification Act of 1936, as amended, 7 U.S.C. 901 *et seq.*

Cropland Conversion Program, 16 U.S.C. 590p(e).

Price support programs operating through producer associations, cooperatives, and other recipients in which the recipient is required to furnish specified benefits to producers (*e.g.*, tobacco, peanuts, naval stores, cotton, rice, honey, dry edible beans, cottonseed and soybeans price support programs), Agricultural Act of 1949, as amended, 7 U.S.C. 1421 *et seq.* Commodity Credit Corporation Charter Act, 15 U.S.C. 714 *et seq.*

Surplus removal programs operating through purchases or diversion payments under clause (2) of section 32 of the Act of August 24, 1935, as amended, in which the recipient under the program is required to provide specified benefits to producers, Section 32 of the Act of August 24, 1935.

Administration and management of National Forests and National Grasslands, and other lands administered by the Forest Service in which Federal assistance is rendered, including but not limited to the following activities:

a. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge, Act of June 4, 1897, as amended, 16 U.S.C. 551. Secretary's Regs. U-11, 36 C.F.R. 251.2. Time Permit Act of March 4, 1915, as amended, 16 U.S.C. 497. American Antiquities Act of June 8, 1906, 16 U.S.C. 433. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1011 (c), (d).

b. Permits for use of Government-owned improvements and land used therewith by other than individuals at a nominal charge, Section 7 of Granger-Thye Act of April 24, 1950, 16 U.S.C. 580d.

Labor Housing Loans made out of the Rural Housing Insurance Fund under sections 514(a) and 517 (b) and (c) of the Housing Act of 1949, 42 U.S.C. 1484, 1487.

Rural Rental and Cooperative Housing Loans made out of the Rural Housing Insurance Fund under sections 515(b) and 517 (b) and (c) of the Housing Act of 1949, 42 U.S.C. 1485, 1487.

**SUPPLEMENT No. 4. PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF AGRICULTURE COVERED BY TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

1. The listing in the appendix of "Food Stamp Program, section 32 of the Act of August 24, 1935, 7 U.S.C. 612c, Food Stamp Act of 1964; 78 Stat. 703." is amended to read "Food Stamp Act of 1964, 78 Stat. 703, as amended by Public Law 90-91, 81 Stat. 228 and Public Law 90-552, 82 Stat. 958, 7 U.S.C. 2011 et seq."

2. Direct Recreation Loans, and Insured Recreation Loans made out of the Agricultural Credit Insurance Fund, to individual farmowners or tenants to finance outdoor recreational enterprises or convert to recreational uses their farming or ranching operations, under section 304 of the Consolidated Farmers Home Administration Act of 1961, 7 U.S.C. 1924, as amended by Public Law 90-488, sec. 2.

3. Direct Recreation Loans to individual farmers or ranchers to finance outdoor recreational enterprises or convert to recreational uses their farming or ranching operations, under section 312 of the Consolidated Farmers Home Administration Act of 1961, 7 U.S.C. 1942, as amended by Public Law 90-488, sec. 8.

4. Financial assistance to States and their political subdivisions to provide housing and related facilities for rural trainees under section 522 of the Housing Act of 1949, 42 U.S.C. 1490b, as amended by Public Law 90-448, sec. 1002.

5. Financial assistance to approved public or private nonprofit organizations to assist in providing mutual and self-help housing for needy low-income individuals and families, under section 523(b)(1)(A) of the Housing Act of 1949, 42 U.S.C. 1490c, as amended by Public Law 90-448, sec. 1005.

6. Direct loans to public or private nonprofit organizations to acquire and develop land as building sites, to be subdivided and sold to families and other eligible parties, under section 523(b)(1)(B) of the Housing Act of 1949, 42 U.S.C. 1490c, as amended by Public Law 90-448, sec. 1005.

7. Assistance under the Federal Meat Inspection Act, 34 Stat. 1260, as amended by Public Law 90-492, 82 Stat. 791, 21 U.S.C. 601 et seq.

8. Assistance under the Poultry Products Inspection Act, 71 Stat. 441, as amended by Public Law 90-492, 82 Stat. 791; 21 U.S.C. 451 et seq.

[29 F.R. 16274, Dec. 4, 1964, as amended at 30 F.R. 14845, Dec. 1, 1965; 32 F.R. 705, Jan. 21, 1967; 33 F.R. 7065, May 11, 1968; 34 F.R. 1132, Jan. 24, 1969]



c. Easements for use of National Forests and National Grasslands by other than individuals at a nominal or no charge, Act of March 4, 1911, as amended, 16 U.S.C. 523. Act of May 13, 1946, as amended, 49 U.S.C. 1115. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1011(d).

d. Permits for disposal of common varieties of mineral materials from lands under Forest Service jurisdiction for use by other than individuals at a nominal or no charge, Act of July 31, 1947, as amended, 30 U.S.C. 601-603, 611. Act of June 11, 1960, 5 U.S.C. 511 note.

e. Timber granted free or at nominal cost to any group, Act of June 4, 1897, as amended, 16 U.S.C. 551. Title III, Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1011(b). Secretary's Regs. S-24 and S-29, 36 C.F.R. 221.24, 221.29.

f. Road rights-of-way, Federal Highway Act of August 27, 1958, 23 U.S.C. 107.

g. Rights-of-way for wagon roads or railroads, Act of March 3, 1899, 16 U.S.C. 525.

h. Use of Federal land for airports, Federal Airport Act of May 13, 1946, as amended, 49 U.S.C. 1105, 1115.

1. Revenue sharing payment to States:

1. Payment of 25 percent of national forest receipts to States for schools and roads, Act of May 23, 1908, as amended, 16 U.S.C. 500.

2. Payment to Minnesota from national forest receipts of a sum based on a formula, Section 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577g-577g-1.

3. Payment to New Mexico and Arizona of proportion of national forest receipts for common-school fund, Sections 6 and 24 of Act of June 20, 1910, 36 Stat. 557, 562, 573.

4. Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act, lands to counties for school and road purposes or both, Section 33, Title III, of Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1012.

Cooperation in the protection, development, management, utilization of forest resources administered by the Forest Service in which Federal assistance is rendered, including but not limited to the following activities:

a. Fire prevention and suppression, Section 2 of Clarke-McNary Act of June 7, 1924, as amended, 16 U.S.C. 565.

b. Forest seedling production and distribution, Section 4 of Clarke-McNary Act of June 7, 1924, as amended, 16 U.S.C. 567.

c. Assistance to States for tree planting, Title IV, Section 401, of Agricultural Act of 1956, as amended, 16 U.S.C. 568-e-g.

d. Technical assistance in forest management, Cooperative Forest Management Act of August 25, 1950, 16 U.S.C. 568 c, d.

e. General forestry assistance, Annual Appropriation Acts commencing with the Department Appropriation Act of 1905; Organic Act of 1862, 5 U.S.C. 511.

f. Control of white pine blister rust, White Pine Blister Rust Protection Act of April 26, 1940, 16 U.S.C. 594a.

g. Protections of forest resources from insects, pests and diseases, Forest Pest Control Act of June 25, 1947, 16 U.S.C. 594-1-5.

Research programs of the Forest Service in which Federal assistance is rendered, including but not limited to the following activities:

a. Advance of funds for cooperative research, Section 20 of Granger-Thye Act of April 24, 1950, added April 6, 1956, 16 U.S.C. 5811-1.

b. Grants for support of scientific research, Act of September 6, 1958, 42 U.S.C. 1891-1893.

c. Research cooperation, McSweeney-McNary Act of May 22, 1928, as amended, 16 U.S.C. 581 et seq.

*Supplement No. 1.* Programs and activities of the Department of Agriculture covered by Title VI of the Civil Rights Act of 1964: Grants for research, P.L. 89-106, 79 Stat. 431.

Transfer of fire lookout towers, improvements, and land to States and political subdivisions, P.L. 85-464, 16 U.S.C. 565b.

Easements for road rights-of-way over National Forest lands, other lands administered by the Forest Service and related lands, P.L. 88-657, 16 U.S.C. 533.

Conveyance of land to States or political subdivisions for widening highways, streets and alleys, P.L. 88-608, 40 U.S.C. 345c.

Financial assistance to states and political subdivisions to provide low-rent housing and related facilities for domestic farm labor, P.L. 88-560, 42 U.S.C. 1486.

Financial and other assistance to landowners, operators, or occupiers to carry out land uses and conservation, section 203, P.L. 89-4, 79 Stat. 12.

Financial assistance to private timber organizations to carry out timber development programs, section 204a, P.L. 89-4, 79 Stat. 13.

Grants under sections 306 and 314 of the Consolidated Farmers Home Administration Act of 1961.

Cropland Adjustment Program, section 601 of the Food and Agriculture Act of 1965, 79 Stat. 1206.

*Supplement No. 2.* Programs and activities of the Department of Agriculture covered by Title VI of the Civil Rights Act of 1964: Consumer Food Programs, Child Nutrition Act of 1966, P.L. 89-642, 80 Stat. 885, 42 U.S.C. 1771.

*Supplement No. 3.* Programs and activities of the Department of Agriculture covered by Title VI of the Civil Rights Act of 1964:

Association Loans made out of the Agricultural Credit Insurance Fund under sections 306(a)(1) and 309(f)(1) of the Consolidated Farmers Home Administration Act of 1961, 7 U.S.C. 1926, 1929.

Farm Ownership Loans made out of the Agricultural Credit Insurance Fund under sections 303 and 309(f)(1) of the Consolidated Farmers Home Administration Act of 1961, 7 U.S.C. 1923, 1929, to install or improve recreational facilities.



### Subpart B—Nondiscrimination—Direct USDA Programs and Activities

**AUTHORITY:** The provisions of this Subpart B of Part 15 issued under sec. 602, 78 Stat. 252; 5 U.S.C. 301, 42 U.S.C. 2000 d-1.

#### § 15.50 Applicability.

The regulations in this subpart complement Subpart A of this part and cover those programs and activities of the Department not subject thereto in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

[29 F.R. 16966, Dec. 11, 1964]

#### § 15.51 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture, shall exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, creed, or national origin under any program or activity administered by such agency, officer, or employee.

(b) No agency, officer, or employee of the Department shall on the ground of race, color, creed, or national origin deny to any person in the United States (1) equal access to buildings, facilities, structures, or lands under the control of any agency of this Department or (2) under any program or activity of the Department, equal opportunity for employment, for participation in meetings, demonstrations, training activities or programs, fairs, awards, field days, encampments, for receipt of information disseminated by publication, news, radio, and other media, for obtaining contracts, grants, loans, or other financial assistance or for selection to assist in the administration of programs or activities of this Department.

[29 F.R. 16966, Dec. 11, 1964]

#### § 15.52 Complaints.

(a) Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by the regulations in this subpart may by himself or by an authorized representative file a written complaint based on the ground of such discrimination. No particular form of complaint shall be required. The complaint must be filed within 90 days from the date of the alleged discrimination unless the Secretary extends the time for filing. Any person who complains of discrimination shall be advised of his right to file a complaint as herein provided and each agency of the Department dealing with the public shall post in a conspicuous place in its office notice of the right to file a complaint under this subpart.

(b) Notwithstanding the foregoing provisions of this section, any complaint filed hereunder, to the extent that it involves a determination, decision or action under a program or activity covered by this subpart, shall be handled in accordance with the procedures established by law or regulation of the Department or any of its agencies for the handling of complaints or appeals under such program or activity which are not based on grounds of discrimination prohibited by this subpart: *Provided*, That the officer, committee or other employee receiving a complaint based on discrimination shall immediately furnish a notice and a factual report thereof to the Secretary in accordance with procedure established by each agency. Each action taken on any such complaint shall likewise be reported to the Secretary.

(c) Any complaint authorized by paragraph (a) of this section involving matters within the responsibility of an agency which has no complaint or appeal procedure established by law or regulations, may be filed directly with the Secretary of Agriculture. Any such complaint filed with any agency of the Department not having responsibility therefor shall be forwarded to the appropriate agency or to the Secretary.

(d) The investigative function with respect to complaints authorized by paragraph (a) of this section shall be discharged by the Office of the Inspector General in the manner determined by the Inspector General.

[31 F.R. 8175, June 10, 1966]

**Subpart C—Rules of Practice and Procedure for Hearings, Decisions and Administrative Review Under the Civil Rights Act of 1964**

**AUTHORITY:** The provisions of this Subpart C issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d-1 sec. 15.9(d) of Subpart A to 7 CFR, Part 15, and laws referred to in the Appendix to Subpart A, Part 15, Title 7 CFR.

**Source:** The provisions of this Subpart C appear at 30 F.R. 14355, Nov. 17, 1965, unless otherwise noted.

**GENERAL INFORMATION**

**§ 15.60 Scope of rules.**

The rules of practice and procedure in this subpart supplement §§ 15.9–15.10 of Subpart A of this part and govern the practice for hearings, decisions, and administrative review conducted by the Department of Agriculture, pursuant to Title VI of the Civil Rights Act of 1964, section 602 (78 Stat. 252) and this part, Title 7, CFR, except these rules shall not apply to any stage of a proceeding which has occurred prior to the effective date hereof.

**§ 15.61 Records to be public.**

All documents and papers filed in any proceeding under this part may be inspected and copied in the Office of the Department Hearing Clerk.

**§ 15.62 Definitions.**

All terms used in this subpart shall, unless the context otherwise requires, have the same meaning as defined in Subpart A of this part.

**§ 15.63 Computation of time.**

A period of time begins with the day following the act or event and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which case it shall be the following workday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

**§ 15.64 Parties.**

The term "party" shall include an applicant or recipient with respect to whom the agency has issued a notice of hearing or opportunity to request a hearing in accordance with Subpart A of this part and § 1581. The agency shall be deemed a party to all proceedings.

**§ 15.65 Appearance.**

Any party may appear in person or by counsel or authorized representative and participate fully in any proceeding.

**§ 15.66 Complainants not parties.**

A person submitting a complaint pursuant to § 15.6 is not a party to the proceedings governed by this subpart, but may petition, after proceedings have been commenced, to become an intervener.

**§ 15.67 Intervener.**

Any interested person or organization may file a petition to intervene which will include a statement of position and a statement of what petitioner expects to contribute to the hearing, and a copy of the petition will be served on all parties. Such petition should be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The hearing officer may grant the petition if he believes that such participation will not unduly delay a hearing and will contribute materially to the proceeding. An intervener is not a party and may not introduce evidence at a hearing, or propound questions to a witness, unless the hearing officer determines that the proposed additional evidence is relevant and will clarify the facts. The intervener may submit and serve on all parties a brief in support or opposition to any brief of a party. All service and notice required by and upon a party shall apply to an intervener.

**§ 15.68 Ex parte communications.**

(1) *General.* After proceedings have been commenced, any communication or discussion ex parte, as regards the merits of the proceeding or a factually related proceeding, between an employee of the Department involved in the decisional process and a person not employed by the Department, and any such communication or discussion between any employee of the Department, who is or has been engaged in any way in the investigation or prosecution of the proceeding or a factually related proceeding, and an employee of the Department who is involved or may be involved in the decisional process of a proceeding, except at a conference, hearing or review proceeding under these rules is improper and prohibited.

(b) *Request for information.* A request for information about the status of a proceeding without discussing issues or expressing points of view and inquiries with respect to procedural matters or an emergency request for an extension of time are not deemed ex parte communications. When practical all parties should be notified of any request for an extension of time. Communication between an applicant or recipient and the agency or the Secretary with respect to securing voluntary compliance with any requirement of Subpart A of this part is not prohibited.

(c) *Un-sponsored written material.* Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a proceeding will be placed in the correspondence section of the docket of the proceeding. Such are not deemed part of the evidence or record.

#### FORM, EXECUTION, FILING AND SERVICE OF DOCUMENTS

##### § 15.71 Form of documents to be filed.

All copies of documents filed in a proceeding shall be dated, signed in ink, shall show the address and position or title of the signatory, and shall show the docket number and title of the proceeding on the front page.

##### § 15.72 Filing.

All documents relating to a proceeding under this subpart shall be filed in an original and two copies of such document with the Office of the Hearing Clerk at Room 112, Administration Building, Department of Agriculture, Washington, D.C., 20250, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 9 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time.

##### § 15.73 Service.

Service shall be made by the Hearing Clerk by personal delivery of one copy to each person to be served or by mailing by first-class mail, or air mail if more than 300 miles, properly addressed with postage prepaid. When a party or intervenor has appeared by attorney or representative, service upon such attorney or representative will be deemed proper service. The initial notice of hearing, opportunity to request a hear-

ing, or notice setting a date for a hearing shall be by certified mail, return receipt requested.

##### § 15.74 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice a hearing or notice of opportunity to request a hearing or notice setting a date for a hearing shall be the date of its delivery, or of its attempted delivery if delivery is refused.

#### INITIAL NOTICE AND RESPONSE

##### § 15.81 How proceedings are commenced.

Proceedings are commenced by mailing a notice to an applicant or recipient of alleged noncompliance with the Act and the Secretary's regulations thereunder. The notice will be signed by the interested agency head or by the Secretary and shall be filed with the hearing clerk for proper service by the hearing clerk according to the rules of this subpart. The notice shall include either a notice of hearing or notice of opportunity to request a hearing as determined by the Secretary and shall comply with the requirements of § 15.9(a).

##### § 15.82 Notice of hearing and response thereto.

A notice of hearing shall fix a date not less than 30 days from the date of service of the notice of a hearing on matters alleged in the notice. If the applicant or recipient does not desire a hearing, he should so state in writing, in which case the applicant or recipient shall have the right to submit written information and argument for the record, and the additional right to further participate in the proceeding. Failure to appear at the time set for a hearing, without good cause, shall be deemed a waiver of the right to a hearing under section 602 of the Act and the regulations in this part and consent to the making of a decision on such information as is available which may be presented for the record.

##### § 15.83 Notice of opportunity to request a hearing and response thereto.

A notice of opportunity to request a hearing shall set a date not less than 20 days from service of said notice within which the applicant or recipient may file a request for a hearing, or may waive a hearing and submit written informa-



tion and argument for the record, in which case, the applicant or recipient shall have the right to further participate in the proceeding. When the applicant or recipient elects to file a request for a hearing, a time shall be set for the hearing at a date not less than 20 days from the date applicant or recipient is notified of the date set for the hearing. Failure of the applicant or recipient to request a hearing or to appear at the date set shall be deemed a waiver of the right to a hearing, under section 602 of the Act and the regulations in this part and consent to the making of a decision on such information as is available which may be presented for the record.

§ 15.84 Answer.

In any case covered by § 15.82 or § 15.83 the applicant or recipient shall file an answer. Said answer shall admit or deny each allegation of the notice, unless the applicant or recipient is without knowledge, in which case the answer shall so state, and the statement will be considered a denial. Failure to file an answer shall be deemed an admission of all allegations of fact in the notice. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters intended to be offered as affirmative defenses must be stated as a separate part of the answer. The answer under § 15.82 shall be filed within 20 days from the date of service of the notice of hearing. The answer under § 15.83 shall be filed within 20 days of service of the notice of opportunity to request a hearing.

§ 15.85 Amendment of notice or answer.

The notice of hearing or notice of opportunity to request a hearing may be amended once as a matter of course before an answer thereto is served, and each applicant or recipient may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be amended only by leave of the hearing officer. An applicant or recipient shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the hearing officer otherwise orders.

§ 15.86 Consolidated or joint hearings.

Two or more proceedings against the same respondent, or against different respondents in which the same or related facts are asserted to constitute non-compliance, may be consolidated for hearing or decision or both by the agency head, if he has the principal responsibility within the Department for the administration of all the laws extending the Federal financial assistance involved. If laws administered by more than one agency head are involved, such officials may by agreement order consolidation for hearing. The Secretary may order proceedings in the Department consolidated for hearing with proceedings in other Federal Departments or Agencies, by agreement with such other Departments or Agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or notice of opportunity to request a hearing shall be promptly served with notice of such consolidation.

HEARING OFFICER

§ 15.91 Who presides.

A hearing officer shall preside over all proceedings held under this part. The hearing officer shall be a hearing examiner qualified under section 11 of the Administrative Procedure Act (5 U.S.C. 1001 et seq.), and designated to hold hearings under the regulations in this subpart or any person authorized to hold a hearing and make a final decision. The hearing officer will serve until he has made an initial decision, certified the record to the Secretary, or made a final decision if so authorized.

§ 15.92 Designation of hearing officer.

Unless otherwise provided by an order of the Secretary at the time the notice of alleged noncompliance provided in § 15.81 is filed with the Office of the Hearing Clerk, the hearing shall be held before a hearing examiner, who shall be appointed by the Chief Hearing Examiner, Office of Hearing Examiners within five days after the filing of such notice. Unless otherwise provided, the hearing examiner shall certify the entire record with his recommended findings and proposed decision to the Secretary for final decision.

§ 15.93 Time and place of hearing.

When a notice of hearing is sent to an applicant or recipient, the time and place of hearing shall be fixed by the Secretary, and when the applicant or



recipient requests a hearing, the time and place shall be set by the hearing officer and in either case in conformity with § 15.9(b). The complainant, if any, shall be advised of the time and place of the hearing.

#### § 15.94 Disability of hearing officer.

In the case of death, illness, disqualification, or unavailability of the designated hearing officer, another hearing officer may be designated by the Secretary to take his place. If such death, illness, disqualification or unavailability occurs during the course of a hearing, the hearing will be either continued under a substitute hearing officer, or terminated and tried de novo in the discretion of the Secretary. In the absence of the designated hearing officer any hearing examiner may rule on motions and other interlocutory papers.

#### § 15.95 Responsibilities and duties of hearing officer.

The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time and place of hearings, or, upon due notice to the parties, to change the date, time and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and interveners to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of parties therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) In accordance with his authority issue an initial decision, or recommended findings and proposed decision, or final decision.

(k) Take any other action a hearing officer is authorized to take under these rules or Subpart A of this part.

### MOTIONS

#### § 15.101 Form and content.

(a) *General.* Motions shall state the relief sought and the authority relied upon. If made before or after the hearing, the motion shall be in writing and filed with the hearing clerk with a copy to all parties. If made at the hearing, they should be stated orally but the hearing officer may require that any motion be reduced to writing and filed and served on all parties in the same manner as a formal motion.

(b) *Extension of time or postponement.* A request for an extension of time should be filed and served on all parties and should set forth the reasons for the request and may be granted upon a showing of good cause. Answers to such requests are permitted, if made promptly.

#### § 15.102 Responses to motions.

Within 8 days or such reasonable time as may be fixed by the hearing officer, or Secretary, if the motion is properly addressed to him, any party may file a response to the motion, unless the motion is made at a hearing in which case an immediate response may be required. The hearing officer may dispose of motions at a prehearing conference.

#### § 15.103 Disposition of motions.

The hearing officer may not sustain or grant a motion prior to expiration of the time for filing responses thereto, but may overrule or deny such motion without waiting on a response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions. Oral motions may be ruled on immediately. Motions submitted to the hearing officer not disposed of in separate rulings or in his decision will be deemed denied. Oral argument shall not be held on written motions unless expressly ordered. Interlocutory appeals from rulings on motions shall be governed by § 15.123.

### HEARING PROCEDURES

#### § 15.110 Prehearing conferences.

(a) In any case in which it appears that such procedure will expedite the proceeding, the hearing officer may, prior to the commencement of the hearing,

request the parties to meet with him or to correspond with him regarding any of the following:

- (1) Simplification and clarification of the issues;
- (2) Necessity or desirability of amendments to the pleadings;
- (3) Stipulations, admissions of fact and of the contents and authenticity of documents;
- (4) Matters of which official notice will be taken;
- (5) Limitation of the number of experts or other witnesses;
- (6) Disposal of all motions; and
- (7) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) The hearing officer shall enter in the record a written summary of the results of the conference or correspondence with the parties.

#### § 15.111 Purpose of hearing.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda or briefs, as determined by the hearing officer. Brief opening statements, which shall be limited to a statement of the party's position and what he intends to prove, may also be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Subpart A of this part. In any case where it appears from the answer of the applicant or recipient to the notice of hearing or notice of opportunity to request a hearing, from his failure timely to answer, or from his admissions or stipulations in the record, that there are no matters of material fact in dispute, the hearing officer may enter an order so finding, and fixing the time for the submission of evidence by the Government for the record. Thereafter, the proceedings shall go to conclusion in accordance with Subpart A of this part and the rules of this subpart. An appeal from such order may be allowed in accordance with the rules for interlocutory appeal in § 15.123.

#### § 15.112 Statement of position and brief.

The hearing officer may require all parties and any intervenor to file a written statement of position or brief prior to the beginning of a hearing.

#### § 15.113 Testimony.

(a) Testimony shall be given orally under oath or affirmation by witnesses at the hearing, but the hearing officer, in his discretion, may require or permit that the testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record thereof. Unless authorized by the hearing officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 15.115 and 15.116, witnesses shall be available at the hearing for cross-examination.

(b) Proposed exhibits shall be exchanged either at a prehearing conference, or otherwise prior to the hearing. Proposed exhibits not so exchanged may be denied admission as evidence unless good cause is shown why they were not exchanged. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

#### § 15.115 Affidavits.

An affidavit, intended to be used as evidence without cross-examination of the affiant, will be filed and served on the parties at least 15 days prior to the hearing; and not less than seven days prior to hearing a party may file and serve written objections to any affidavit on the ground that he believes it necessary to test the truth of assertions therein by cross-examination. In such event, the affidavit objected to will not be received in evidence unless the affiant is made available for cross-examination at the hearing or otherwise as prescribed by the hearing officer. In absence of an objection being filed within the time specified, such affidavit will be received in evidence.

#### § 15.116 Depositions.

Upon such terms as may be just, the hearing officer, in his discretion, may authorize the testimony of any witness to be taken by deposition.

**§ 15.117 Evidence.**

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded, and technical rules of evidence shall not apply but rules or principles designed to assure the most credible evidence available and to subject testimony to test by cross-examination shall apply.

**§ 115.118 Cross-examination.**

Cross-examination will be limited to the scope of direct examination and matters at issue in the hearing.

**§ 15.119 Objections.**

Objections to evidence shall be timely and briefly state the ground relied upon. The ruling of the hearing officer will be part of the record. Argument in support of the objection will not be part of the record.

**§ 15.120 Exceptions to rulings of hearing officer unnecessary.**

Exceptions to rulings of the hearing officer are unnecessary. It is sufficient that a party, at the time the ruling of the hearing officer is sought, makes known the action which he desires the hearing officer to take, or his objection to an action taken, and his grounds therefor.

**§ 15.121 Official notice.**

A public document, or part thereof, such as an official report decision, opinion, or published scientific or economic statistical data issued by any branch of the Federal or a State Government which has been shown to be reasonably available to the public, may be offered for official notice and accepted in the record without further proof of authenticity. Where official notice is to be taken, any party, on timely request, shall have an opportunity to show the contrary.

**§ 15.122 Offer of proof.**

An offer of proof made in connection with an objection taken to any ruling of the hearing officer rejecting or excluding proposed oral testimony shall consist of a statement for the record of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as an offer of proof.

**§ 15.123 Appeals from ruling of hearing officer.**

A ruling of the hearing officer may not be appealed to the Secretary prior to consideration of the entire proceeding by the hearing officer except with the consent of the hearing officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any part or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the Secretary within such period as the hearing officer directs. Oral argument will be heard in the discretion of the Secretary.

**§ 15.124 Admissions as to facts and documents.**

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the hearing officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the hearing officer may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

[31 F.R. 8586, June 21, 1966]

**THE RECORD****§ 15.131 Official transcript.**

The hearing clerk will designate the official reporter for all hearings. The



official transcript of testimony taken, together with any affidavits, exhibits, depositions, briefs, or memoranda of law shall be filed with the hearing clerk. Transcripts of testimony in hearings will be supplied by the official reporter to the parties and to the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the hearing officer may authorize corrections to the transcript which involve matters of substance.

**§ 15.132 Record for decision.**

The transcript of testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, except the correspondence section of the docket, including rulings, and any recommended findings and proposed decision, or initial decision shall constitute the exclusive record for final decision.

**POSTHEARING PROCEDURES**

**§ 15.135 Posthearing briefs.**

The hearing officer shall fix a reasonable time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs. Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon. Briefs shall be filed in the Office of the Hearing Clerk with a copy to all parties.

**§ 15.136 Decisions and notices.**

When the time for submission of posthearing briefs has expired the hearing officer shall either make an initial decision or final decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision and a copy of such initial, or final decision or certification shall be mailed to the applicant or recipient and other parties by the hearing clerk.

**§ 15.137 Exceptions to initial or proposed decision.**

Within 30 days of the mailing of such notice of initial or recommended findings and proposed decision, the applicant or recipient and other parties may file with the hearing clerk for consideration by the Secretary exceptions to the initial or recommended findings and proposed

decision, with reasons therefor. Each party will be given reasonable opportunity to file briefs or other written statements of contentions in which the party may request that the decision be modified, reversed, affirmed or adopted.

**§ 15.138 Review of initial decision.**

In the absence of exceptions to an initial decision, the Secretary may on his own motion within 45 days after an initial decision serve upon the parties a notice that he will review the decision and will give the parties reasonable opportunity to file briefs or other written statements of contentions. At the expiration of said time for filing briefs, the Secretary will review the initial decision and issue a final decision thereon. In the absence of either exceptions to an initial decision or a notice or review, the initial decision shall constitute the final decision of the Secretary.

**§ 15.139 Oral argument.**

If any party desires to argue orally before the Secretary on the review of recommended findings and proposed decision, or an initial decision, he shall so state at the time he files his exceptions or brief. The Secretary may grant such request in his discretion. If granted, he will serve notice of oral argument on all parties and will set forth the order of presentation and the amount of time allotted, and the time and place of argument.

**§ 15.140 Service of decisions.**

All final decisions shall be promptly served on all parties and the complainant.

**§ 15.141 Contents of decision.**

Each decision of a hearing officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to the regulations in this part with which it is found that the applicant or recipient has failed to comply.

**§ 15.142 Content of orders.**

The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved; and may contain such terms, conditions, and other provisions as are consistent with and will effectuate



the purposes of the Act and the regulations in this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to the regulations in this part, or to have otherwise failed to comply with the regulations in this part, unless and until it corrects its noncompliance and satisfies the Agency that it will fully comply with the regulations in this part.

**§ 15.143 Decision where financial assistance affected.**

The Secretary shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under the regulations in this part or the Act.



the purposes of the Act and the regulations in this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to the regulations in this part, or to have otherwise failed to comply with the regulations in this part, unless and until it corrects its noncompliance and satisfies the Agency that it will fully comply with the regulations in this part.

**§ 15.143 Decision where financial assistance affected.**

The Secretary shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under the regulations in this part or the Act.











